

Revised Ordinances of the City and County of Honolulu 1990

Chapter 38

RESIDENTIAL CONDOMINIUM, COOPERATIVE HOUSING AND RESIDENTIAL PLANNED DEVELOPMENT LEASEHOLD CONVERSION

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Article 1.

General Provisions

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Sec. 38-1.1 Purpose.

The purpose of this chapter is to establish the right of any person, who is a lessee under any long-term

lease of land upon which is situated either residential condominium property regime projects created under HRS Chapter 514A, cooperative housing unit projects or residential planned development projects, to purchase at a fair and reasonable price the fee simple title to such land. (Added by Ord. 91-95)

Sec. 38-1.2 Definitions.

Unless otherwise clear from the context, as used in this chapter:

"Association of apartment owners" has the same meaning as in HRS Section 514A-3.

"City" means the City and County of Honolulu.

"Condominium" means a residential apartment, together with an appurtenant undivided interest in common elements, located on land subject to a declaration of condominium property regime as defined in HRS Chapter 514A, together with an appurtenant undivided interest in common elements, both used or occupied, or developed, devoted, intended, or permitted to be used or occupied as a principal place of residence for a single family.

"Condominium property regime" means a condominium property regime project established under HRS Chapter 514A.

"Cooperative" means a residential apartment in a housing project held, owned, or leased by a cooperative housing corporation.

"Cooperative owner" means the owner of a cooperative.

"Cooperative housing corporation" means a corporation which satisfies the requirements of HRS Section 519-3(d)(1), or of HRS Chapter 421H, and the requirements of Section 216 of the Internal Revenue Code of 1986, as amended.

"Department" means the city department of housing and community development created by Article 6, Chapter 10, Revised Charter of the City and County of Honolulu 1973, as amended.

"Development" means the area of land, irrespective of size, which:

(1) Is subject to a declaration of condominium property regime pursuant to HRS Chapter 514A, which condominium property regime contains or is intended to contain condominium apartment units occupied or to be occupied under apartment leases or condominium conveyance documents; or

(2) Contains or is intended to contain a cooperative housing unit project held, owned or leased by a cooperative housing corporation;

(3) Contains or is intended to contain a residential planned unit development project;

To qualify as a development, there shall be 10 or more residential condominium apartment units, cooperative housing apartment units or residential planned development housing units on the land.

"Director" means the director of the department of housing and community development.

"Fair market value" means that amount of money that a purchaser willing, but not obliged, to buy land or an interest in land would pay to an owner willing, but not obliged, to sell the land or interest in land in an open market, taking into consideration all uses to which the land is adapted or might in reason be applied.

"Fee owner" means the person who owns the fee simple title to the land leased under an apartment lease, condominium conveyance document, or proprietary lease, including a life tenant with a remainder over, vested or contingent, and a holder of a defeasible estate, and the person's heirs, successors, legal representatives, and assigns.

"Lease" means the conveyance of land or an interest in land by a fee simple owner as lessor, to a lessee or sublessee, or by any other person as sublessor to any person, in consideration of payment of rent or other recompense. With respect to a cooperative, lease means a ground lease to the cooperative housing corporation and not leases to the individual apartment unit owners.

"Leased fee" and "leased fee interest" mean reversionary interests of the fee owner, lessor, and all legal

and equitable owners of land which is leased, other than the lessee's or sublessee's interest.

"Legal and equitable owners" means the fee simple owner and all persons having legal or equitable ownership interests in the leased fee or in the lessor's leasehold estate, including mortgagees, developers, lienors, and sublessors, and their respective heirs, successors, legal representatives, and assigns.

"Lessee" means any person to whom land is leased or subleased, including the person's heirs, successors, legal representatives, and assigns and who is the owner-occupant of the residential condominium unit, residential cooperative housing unit or residential planned development unit.

"Lessor" means any person who leases or subleases land to another, and the person's heirs, successors, legal representatives and assigns.

The terms "lessors," "lessees," "fee owner," and "legal and equitable owners" mean and include individuals, both masculine and feminine, and the terms also mean and include corporations, firms, associations, trusts, estates, and the state and the City and County of Honolulu. When more than one person are the lessors, lessees, fee simple owners, fee owners, or legal and equitable owners of a lot, the terms apply to each of them, jointly and severally.

"Owner-occupant" means any individual in whose name sole or joint legal title is held in a residential condominium unit, residential cooperative apartment unit or residential planned development unit which, simultaneous to the individual's ownership, serves as the individual's principal place of residence for a period of not less than one year immediately prior to application for conversion, as well as during the period pending legal proceedings to acquire the fee; provided, that the individual shall retain complete possessory control of the premises of the residential unit during these periods. An individual shall not be deemed to have complete possessory control of the premises if the individual rents, leases, or assigns the premises for any period of time to any other person in whose name legal title is not held. Proof of residency and possessory control shall be as established by rules adopted by the department. The term "owner-occupant-shareholder" means any individual who is a sole or joint legal owner of shares in a cooperative housing corporation or trust and leases a cooperative apartment unit which, simultaneous to the individual being a shareholder, serves as the individual's principal place of residence for a period of not less than one year immediately prior to application for conversion, as well as during the period pending legal proceedings to acquire the fee; provided, that the individual shall retain complete possessory control of the premises of the unit during these periods. An individual shall not be deemed to have complete possessory control of the premises of the unit if the individual rents, leases, or assigns the premises for any period of time to any other person who is not a shareholder and does not have a proprietary lease to the cooperative apartment unit. Proof of residency and possessory control shall be as established by rules adopted by the department.

"Person" means any person who leases or subleases land from a lessor and, for purposes of this chapter, means the same as the term "lessee" as used in this chapter.

"Planned development" means a housing development project, also known as a cluster housing development or planned unit development, where the apartment owner holds a leasehold interest in the lot under his or her unit, and provided that this interpretation excludes any planned unit development covered by HRS Chapter 516.

"Residential condominium apartment," "residential condominium housing unit," "residential cooperative housing unit," "residential cooperative apartment unit," or "residential planned development unit," for purposes of this chapter, do not mean and include the following:

(1) A unit used for commercial purposes;

(2) A unit used as a time-share unit or transient vacation unit as defined under Chapter 21, Article 9; or

(3) Any other nonresidential condominium, cooperative, or planned development unit.

(Added by Ord. 91-95)

Sec. 38-1.3 Applicability.

This chapter applies to all lands, in the City and County of Honolulu on which are situated either residential condominium property regime projects created under HRS Chapter 514A, cooperative housing units projects or residential planned development projects owned or held privately by the City and County of Honolulu or by the state, except Hawaiian home lands subject to Article XII of the Constitution of the State and lands owned or held by the federal government. This chapter is not meant to supersede or preclude any other remedy at law available to condominium apartment owners, cooperative housing corporations or owners of residential planned development units, including those available under HRS Chapter 480. (Added by Ord. 91-95)

Sec. 38-1.4 No estoppel or waiver.

The rights granted to lessees by this chapter shall be effective, notwithstanding any provision in any lease, contract, covenant, bylaw, or articles of incorporation to the contrary. No lessee shall be estopped by any covenant, term, condition, or contract, however worded, from claiming the rights granted by this chapter, or otherwise be deemed to have waived those rights. Any provision in any lease, covenant, contract, bylaw or article of incorporation contrary to the intent or purpose of this chapter shall be void. (Added by Ord. 91-95)

Sec. 38-1.5 Trusts and estates.

The rights granted to lessees by this chapter shall be effective, notwithstanding any condition or provision to the contrary in any instrument creating any life tenancy, defeasible fee, estate, or trust, regardless of whether the tenancy, fee, estate, or trust was in effect prior to the effective date of this chapter or is created hereafter; and the life tenant, holder, officer, or trustee of any tenancy, defeasible fee, estate, or trust may convey residential leases for terms exceeding 20 years and shall perform all acts required by this chapter. Every instrument of this type now in existence or hereafter executed shall be construed in conformity with the intent and purpose of this chapter. No trustee, officer, or agent of a lessor or other legal or equitable owner, while acting pursuant to this chapter, shall be deemed to be acting in bad faith or to have committed a breach of trust. (Added by Ord. 91-95)

Sec. 38-1.6 Violation--Penalty.

Any person who violates any provision of this chapter shall be fined not more than \$1,000.00 or imprisoned not more than one year, or both. All fines collected shall be deposited in the fee simple fund created by Section 38-6.1. (Added by Ord. 91-95)

Sec. 38-1.7 Administration of chapter.

The department of housing and community development shall administer this chapter. (Added by Ord. 91-95)

Sec. 38-1.8 Department powers and duties.

In addition to any other duty prescribed by law and in this chapter, the director of the department of housing and community development shall:

- (a) Within six months after the effective date of this chapter, adopt in accordance with HRS Chapter 91, rules necessary to effectuate the purposes of this chapter;
- (b) Be responsible for enforcement of this chapter and the rules adopted pursuant to it;
- (c) Establish reasonable fees to be assessed and collected from lessees for the services of any appraiser;
- (d) Disseminate information and render assistance to lessees of residential condominiums, cooperative housing developments and residential planned developments in order that this chapter may be understood

and effectively implemented;

(e) Conduct an investigation upon any written complaint or whenever it appears that a provision of this chapter has been or is being violated. In the investigation, the director may examine the books, accounts, records, and files of any person connected with the matter under investigation and conduct hearings. If the director finds from satisfactory evidence that any person has violated or is violating this chapter, the director may order the person to cease and desist from continuing the violation or engaging in doing any act or acts in furtherance thereof and, where necessary, the director may bring an action in the name of the City and County of Honolulu in any court of competent jurisdiction for enforcement of its orders;

(f) Facilitate the acquisition of all necessary property interests by the city through eminent domain proceedings as provided in this chapter;

(g) Facilitate the making and execution of contracts, mortgages, and other instruments necessary or convenient to the exercise of powers of the city under this chapter;

(h) From time to time, require from the lessors of leases of residential condominiums, cooperative housing developments and residential planned developments and from all fee owners and legal and equitable owners of such condominiums, cooperatives and planned developments subject to leases of land, such information as it may reasonably require in connection with the administration of this chapter; and

(i) Do all things necessary and convenient to carry out the powers expressly conferred upon the director by this chapter.

(Added by Ord. 91-95)

Sec. 38-1.9 Quitclaim deeds.

Unless otherwise provided by law, the city shall issue quitclaim deeds whenever it conveys, transfers, sells or assigns any property developed, constructed, or sponsored under this chapter. (Added by Ord. 91-95)

Article 2. Condemnation of Condominium Development Leaseholds

Sections:

38-2.1 Applicability.

38-2.2 Designation of development for acquisition.

38-2.3 Purchase of leased fee interest.

38-2.4 Qualification for purchase.

38-2.5 Deposits by lessees.

38-2.6 Preliminary negotiation required.

38-2.7 Eminent domain trial.

Sec. 38-2.1 Applicability.

This article applies to developments which, at the time of acquisition of the development by the city, are:

(a) Developed into condominium property regimes or occupied by residential lessees under leases of condominium conveyance documents executed before the effective date of this chapter; or

(b) Developed or partially developed into condominium property regimes occupied or to be occupied by residential leases under apartment leases or condominium conveyance documents executed on or after the effective date of this chapter; provided, that 90 percent of the leases to units in the condominium have been executed.

(Added by Ord. 91-95)

Sec. 38-2.2 Designation of development for acquisition.

(a) Subject to subsection (b) of this section, the department may designate all or that portion of a development containing residential condominium land for acquisition, and facilitate the acquisition of the applicable leased fee interests in that land by the city through the exercise of the power of eminent domain or by purchase under the threat of eminent domain, after:

(1) At least 25 of all the condominium owners within the development or at least owners of 50 percent of the condominium units, whichever number is less, apply to the department to purchase the leased fee interest pursuant to Section 38-2.4, and file an application with the department; and

(2) Due notice is given and a public hearing held, the time and place of which have been duly advertised in a newspaper of general circulation in the City and County of Honolulu, on at least three different days, the last publication not being less than five days before the date of hearing, the department finds that the acquisition of the leased fee interest in the development or a portion thereof, through exercise of the power of eminent domain or by purchase under threat of eminent domain and the disposition thereof as provided in this part, will effectuate the public purposes of this chapter.

For purposes of this subsection, "condominium owners" means the owner-occupants of the condominium development.

(b) This land designated and acquired by the city may consist of a portion of or the entirety of the land area submitted to the declaration of condominium property.

(Added by Ord. 91-95)

Sec. 38-2.3 Purchase of leased fee interest.

The condominium lessees who have authorized approval and who have qualified for purchase of the leased fee interest, shall purchase from the city within 60 days of acquisition of the interest of the city, the leased fee interest appertaining to their condominiums, together with an undivided leased fee interest equal to the percentage of common interest appurtenant to the lessee's condominium units, subject to the terms, covenants, and conditions of the contract executed with the city. If any lessee refuses to enter into such a contract, then in that event, such lessee shall pay to the city all costs incurred by the city in the acquisition of the appurtenant condominium leased fee interest within the development including but not limited to appraisal costs, costs of publication, and survey, and the department is authorized to take whatever action it deems necessary to collect the costs; and provided further, that in case of a wilful breach of the purchase agreement, the city shall be entitled to any available remedy, including the sale of its interest in the condominium. (Added by Ord. 91-95)

Sec. 38-2.4 Qualification for purchase.

(a) No sale of any condominium land within a development shall be made unless the lessees:

(1) Are at least 18 years of age and are owner-occupants of their condominium units;

(2) Are bona fide residents of the City and County of Honolulu;

(3) Have legal title to, or pursuant to an agreement of sale, have an equitable interest in a condominium situated on the leased property applied for; provided, that for the purpose of this section, the vendor under such agreement of sale shall not be eligible to purchase that property. An "agreement of sale" means an executory contract for the sale and purchase of real property which binds one party to sell and the other party to buy property which is the subject matter of the transaction.

(4) Do not own property in fee simple lands suitable for residential purposes within the City and County of Honolulu or having pending before the state housing finance and development corporation, or the city department of housing and community development an unrefused application to lease or

purchase residential real property for dwelling unit purposes. A person is deemed to own lands, for the purpose of this paragraph, if the person, the person's spouse, or both the person and the person's spouse (unless separated and living apart under a decree of a court of competent jurisdiction) own lands, including any interest, in a land trust in the City and County of Honolulu;

(5) Submit a letter of credit, certificate of deposit, proof of funds, or approved application from any lending institution demonstrating that the lessees who are participating in the purchase of the fee interest will be able to pay the city promptly for the leased fee interests;

(6) Submit an application for the purchase of the leased fee interest in good faith, and in such form as is acceptable to the department; and

(7) Execute a contract for the purchase of the fee interest in such form as is acceptable to the department.

(b) In the event of a wilful breach of contract by the lessees, the city may sell or assign its interest without respect to the requirements of this section.

(c) The department may require additional testimony or evidence under oath in connection with any application. The determination by the department of any applicant's eligibility under this part shall be conclusive as to all persons thereafter dealing with the property; provided, that the making of any false statement knowingly by applicants or other persons in connection with any application shall constitute perjury and be punishable as such.

(d) The department shall adopt rules under HRS Chapter 91, to effectuate the purposes of this section. (Added by Ord. 91-95)

Sec. 38-2.5 Deposits by lessees.

(a) The department may require the submission of a deposit by lessees seeking to purchase the leased fee interest in their condominiums pursuant to this chapter. The means of determining the amount of the deposit shall be established by rule.

(b) The deposit may be applied by the department to payment of appraisal, survey, attorney fees, administrative costs, and any other costs the department has incurred as a result of the designation, with the remainder of the deposit to be applied toward the purchase of the owner's fee interest. The department shall incur no liability for the deposits under this section.

(Added by Ord. 91-95)

Sec. 38-2.6 Preliminary negotiation required.

(a) Upon the filing with the department of an application by the lessees in accordance with Section 38-2.2(a)(1) of this article, the department shall request the lessor and the lessees to negotiate the just compensation which the lessees will pay to the lessor to acquire the lessor's interest in the development. If no agreement is reached within 60 days after the request to negotiate, the parties shall simultaneously exchange written final offers together with any appraisals, other documents, and any other expert opinions on which their negotiating positions were based. Copies of the final offers and related documents shall be submitted to the department and the department may use the information in determining, prior to commencing condemnation proceedings, the probability that the lessees will be able to meet the financial requirements of Section 38-2.4(5).

(b) This preliminary negotiation shall be in advance of and shall not constitute any part of any action in condemnation or eminent domain.

Any offers, appraisals, other documents, or any other expert opinions giving a value of the lessor's interest in the condominium development which were prepared by a party for use in preliminary negotiations as provided for in this section, for setting qualification amounts pursuant to Section

38-2.4(5) or for negotiations to determine the just compensation after designation to acquire the lessor's interest in the development, and were not prepared for use in the trial shall not be discoverable, usable, or admissible by an opposing or adverse party in any action, suit, or proceeding brought under this chapter. (Added by Ord. 91-95)

Sec. 38-2.7 Eminent domain trial.

The parties to the eminent domain action brought under this chapter shall be the city as plaintiff and the lessees, and the lessors and all other necessary parties as defendants. All parties shall be given an opportunity to present evidence of the fair market value of the leased fee interest being acquired. (Added by Ord. 91-95)

Article 3. Condemnation of Cooperative Housing Development Leaseholds

Sections:

38-3.1 Applicability.

38-3.2 Designation of development for acquisition.

38-3.3 Purchase of leased fee interest.

38-3.4 Qualification for lease or purchase.

38-3.5 Deposits by lessees.

38-3.6 Preliminary negotiation required.

38-3.7 Eminent domain trial.

Sec. 38-3.1 Applicability.

This article applies to developments which, at the time of acquisition of the development by the city, are leased to cooperative housing corporations that sublease individual apartments to residential lessees under proprietary leases executed either prior to or after the effective date of this chapter; provided that ninety percent of the proprietary leases to the cooperative have been executed. (Added by Ord. 91-95)

Sec. 38-3.2 Designation of development for acquisition.

(a) Subject to subsection (b) of this section, the department may designate all of a development for acquisition, and facilitate the acquisition of the leased fee interests in the development by the city through the exercise of the power of eminent domain or by purchase under the threat of eminent domain after:

(1) The cooperative housing corporation applies to the department to purchase the leased fee interest pursuant to Section 38-3.4 after the cooperative housing corporation receives approval from its shareholders; and

(2) If, after due notice and public hearing, the time and place of which have been duly advertised in a newspaper of general circulation in the City and County of Honolulu, on at least three different days, the last publication being not less than five days before the date of hearing, the department finds that the acquisition of the leased fee interest in the development, through exercise of the power of eminent domain or by purchase under threat of eminent domain and the disposition thereof as provided in this article will effectuate the public purposes of this chapter.

(b) The development designated and acquired by the city shall consist of the entire land parcel leased to a cooperative housing corporation.

(c) Where the cooperative housing development consists of both residential and nonresidential units, the

terms "development," "cooperatives," or similar terms when used in this article, including the provisions on acquisition, disposal, and financing of cooperatives and developments, shall be construed to apply only to the residential units.

(Added by Ord. 91-95)

Sec. 38-3.3 Purchase of leased fee interest.

The cooperative housing corporation which has applied to the department and which has qualified for purchase of the leased fee interest, shall purchase from the city within 60 days of acquisition of the interest of the city, the entire leased fee interest appertaining to the cooperative subject to the terms, covenants, and conditions of the contract executed with the city; provided, that:

(a) If the cooperative housing corporation refuses to enter into such a contract, then it shall pay to the city all costs incurred by the city in the acquisition of the leased fee interest including, but not limited to, appraisal costs, costs of publication, and survey, and the department is authorized to take whatever action it deems necessary to collect these costs;

(b) In case of a wilful breach of the purchase agreement, the city shall be entitled to any available remedy, including the sale of its interest in the cooperative.

(Added by Ord. 91-95)

Sec. 38-3.4 Qualification for lease or purchase.

(a) No sale of any leased fee interest in a cooperative housing development to a cooperative housing corporation shall be made unless the cooperative housing corporation satisfies the following requirements:

(1) Submission of proof, in such form as is acceptable to the department, that a majority of the shareholders of the cooperative housing corporation have approved or ratified the purchase of the leased fee interest of the development;

(2) Submission of a letter of credit, certificate of deposit, proof of funds, or approved application from any lending institution demonstrating that the cooperative housing corporation will be able to promptly pay the city for the leased fee interest;

(3) Submission of an application for purchase of the leased fee interest in good faith, and in such form as is acceptable to the department;

(4) Execution of a contract for the purchase of the leased fee interest in such form as is acceptable to the department; and

(5) Submission of proof, in such form as is acceptable to the department, that at least 60 percent of the cooperative housing corporation consists of owner-occupant-shareholders of residential units within the affected cooperative housing development.

(b) In the event of a wilful breach of contract by the cooperative housing corporation, the city may sell or assign its interest without respect to the requirements of this section.

(c) The department may require additional testimony or evidence under oath in connection with any application. The determination by the department of any applicant's eligibility under this part shall be conclusive as to all persons thereafter dealing with the property; provided, that the making of any false statement knowingly by applicants or other person in connection with any application shall constitute perjury and be punishable as such. (d) The department shall adopt rules under HRS Chapter 91 to effectuate the purposes of this section.

(Added by Ord. 91-95)

Sec. 38-3.5 Deposits by lessees.

(a) The department may require the submission of a deposit by the cooperative housing corporation

applying to the department for the purchase of the leased fee interest pursuant to this chapter. The amount of the deposit shall be established by rule.

(b) The deposit may be applied by the department to payment of appraisal, survey, attorney fees, administrative costs, and any other costs the department has incurred as a result of the designation, with the remainder of the deposit to be applied toward the purchase of the owner's fee interest. The department shall incur no liability for those deposits under this section.

(Added by Ord. 91-95)

Sec. 38-3.6 Preliminary negotiation required.

(a) Upon the filing of a petition by the cooperative housing corporation with the department, the department shall request the lessor and the cooperative housing corporation to negotiate the just compensation which the cooperative housing corporation will pay to the lessor to acquire the lessor's interest in the development. If no agreement is reached within 60 days after the request to negotiate, the parties shall simultaneously exchange written final offers together with any appraisals, other documents, and any other expert opinions on which their negotiating positions were based. Copies of the final offers and related documents shall be submitted to the department and the department may use the information in determining, prior to commencing condemnation proceedings, the probability that the cooperative housing corporation will be able to meet the financial requirements of Section 38-3.4(a)(2).

(b) This preliminary negotiation shall be in advance of and shall not constitute any part of any action in condemnation or eminent domain.

Any offers, appraisals, other documents, or any other expert opinions giving a value of the lessor's interest in the land beneath the development, which were prepared by a party for use in preliminary negotiations as provided for in this section, for setting the qualification amounts pursuant to Section 38-3.4(a)(2) or for negotiations to determine the just compensation after designation to acquire the lessor's interest in the development, and were not prepared for use in the trial, shall not be discoverable, usable, or admissible by an opposing or adverse party in any action, suit, or proceeding brought under this chapter.

(Added by Ord. 91-95)

Sec. 38-3.7 Eminent domain trial.

The parties to the eminent domain action brought under this chapter shall be the city as plaintiff and the cooperative housing corporation, lessors, landowners and all other necessary parties as defendants. All parties shall be given an opportunity to present evidence of the fair market value of the leased fee interest being acquired. (Added by Ord. 91-95)

Article 4. Condemnation of Residential Planned Development Leaseholds

Sections:

38-4.1 Applicability.

38-4.2 Designation of development for acquisition.

38-4.3 Purchase of leased fee interest.

38-4.4 Qualification for purchase.

38-4.5 Deposits by lessees.

38-4.6 Preliminary negotiation required.

38-4.7 Eminent domain trial.

Sec. 38-4.1 Applicability.

This article applies to residential planned developments which, at the time of acquisition of the development by the city, are:

- (a) Developed into residential planned developments and occupied by residential lessees under apartment leases or planned development conveyance documents executed before the effective date of this chapter; or
- (b) Developed or partially developed into such planned developments occupied or to be occupied by residential lessees under apartment leases or planned development conveyance documents executed on or after the effective date of this chapter; provided, that 90 percent of such leases to the planned unit development have been executed.

(Added by Ord. 91-95)

Sec. 38-4.2 Designation of development for acquisition.

(a) Subject to subsection (b) of this section, the department may designate all or a portion of the land beneath a planned development containing residential units for acquisition, and facilitate the acquisition of the applicable leased fee interests in such land by the city through the exercise of the power of eminent domain or by purchase under the threat of eminent domain, after:

(1) At least 25 of all the owners within the development or at least owners of 50 percent of the residential units, whichever number is less, of all the owners within the planned development apply to the department to purchase the leased fee interest pursuant to Section 38-4.4, and file the application with the department; and

(2) Due notice and public hearing, the time and place of which have been duly advertised in a newspaper of general circulation in the City and County of Honolulu, on at least three different days, the last publication being not less than five days before the date of hearing, the department finds that the acquisition of the leased fee interest in the development or a portion thereof, through exercise of the power of eminent domain or by purchase under threat of eminent domain and the disposition thereof as provided in this section will effectuate the public purposes of this chapter. For purposes of this subsection, "owners," as used in subsection (a)(1) of this section means the owner-occupants of the planned developments.

(b) The land designated and acquired by the city may consist of a portion of or the entire land area submitted to the declaration of planned development.

(Added by Ord. 91-95)

Sec. 38-4.3 Purchase of leased fee interest.

The planned development lessees, who have authorized approval and who have qualified for purchase of the leased fee interest, shall purchase from the city within 60 days of acquisition of the interest by the city, the leased fee interest appertaining to the planned development unit, together with an undivided leased fee interest equal to the percentage of common interest appurtenant to their units, subject to the terms, covenants, and conditions of the contract executed with the city; if any lessees refuse to enter into such contract, then in that event, those lessees shall pay to the city all costs incurred by the city in the acquisition of the relevant planned development within the development including but not limited to appraisal costs, costs of publication, and survey, and the department is authorized to take whatever action it deems necessary to collect the costs; and provided, further, that in case of a wilful breach of the purchase agreement, the city shall be entitled to any available remedy, including the sale of its interest in the planned development. (Added by Ord. 91-95)

Sec. 38-4.4 Qualification for purchase.

(a) No sale of any leased fee interest in land under a residential planned development land shall be made unless the lessees:

- (1) Are at least 18 years of age and are owner-occupants of their residential planned units;
- (2) Are bona fide residents of the City and County of Honolulu;
- (3) Have legal title to, or pursuant to an agreement of sale an equitable interest in a planned unit development situated on the leased property applied for; provided, that for purposes of this section, the vendor under such agreement of sale shall not be eligible to purchase that property. An "agreement of sale" means an executory contract for the sale and purchase of real property which binds one party to sell and the other party to buy property which is the subject matter of the transaction;
- (4) Do not own property in fee simple lands suitable for residential purposes within the City and County of Honolulu or have pending before the state housing finance and development corporation, or the city department of housing and community development an unrefused application to lease or purchase residential real property for dwelling unit purposes. A person is deemed to own lands pursuant to this chapter, if the person, the person's spouse, or both the person and the person's spouse (unless separated and living apart under a decree of a court of competent jurisdiction) own lands, including any interest in a land trust in the City and County of Honolulu;
- (5) Submit a letter of credit, certificate of deposit, proof of funds, or approved application from any lending institution demonstrating that the lessees who are participating in the purchase of the fee interest will be able to pay the city promptly for the leased fee interests;
- (6) Submit an application for the purchase of the leased fee interest in good faith, and in such form as is acceptable to the department; and
- (7) Execute a contract for the purchase of the fee interest in such form as is acceptable to the department.

(b) In the event of a wilful breach of contract by the lessees of the residential planned development, the city may sell or assign its interest without respect to the requirements of this section.

(c) The department may require additional testimony or evidence under oath in connection with any application. The determination by the department of any applicant's eligibility under this section shall be conclusive to all persons thereafter dealing with the property; provided, that the making of any false statement knowingly by applicants or other persons in connection with any application shall constitute perjury and be punishable as such. (d) The department shall adopt rules under HRS Chapter 91, to effectuate the purposes of this section.

(Added by Ord. 91-95)

Sec. 38-4.5 Deposits by lessees.

(a) The department may require the submission of a deposit by lessees seeking to purchase the leased fee interest in their planned development housing unit pursuant to this chapter. The amount of the deposit shall be established by rule.

(b) The deposit may be applied by the department to payment of appraisal, survey, attorney fees, administrative costs, and any other costs the department has incurred as a result of the designation, with the remainder of the deposit to be applied toward the purchase of the owner's fee interest. The department shall incur no liability for the deposits under this section.

(Added by Ord. 91-95)

Sec. 38-4.6 Preliminary negotiation required.

(a) Upon the filing of a petition by the lessees with the department, the department shall request the

lessor and the lessees to negotiate the just compensation which the lessees will pay to the lessor to acquire the lessor's interest in the development. If no agreement is reached within 60 days after the request to negotiate, the parties shall simultaneously exchange written final offers together with any appraisals, other documents, and any other expert opinions on which their negotiating positions were based. Copies of the final offers and related documents shall be submitted to the department and the department may use the information in determining, prior to commencing condemnation proceedings, the probability that the lessees will be able to meet the financial requirements of Section 38-4.4(a)(5).

(b) This preliminary negotiation shall be in advance of and shall not constitute any part of the action in condemnation or eminent domain.

Any offers, appraisals, other documents, or any other expert opinions giving the value of the lessor's interest in the land beneath the planned development, which were prepared by a party for use in preliminary negotiations as provided for in this section, for setting qualifications amounts pursuant to Section 38-4.4(a)(5) or for negotiations to determine the just compensation after designation to acquire the lessor's interest in the development and were not prepared for use in the trial, shall not be discoverable, usable, or admissible by an opposing or adverse party in any action, suit, or proceeding brought under this chapter.

(Added by Ord. 91-95)

Sec. 38-4.7 Eminent domain trial.

The parties to the eminent domain action brought under this chapter shall be the city as plaintiff and the lessees, lessors, landowners and all other necessary parties as defendants. All parties shall be given an opportunity to present evidence of the fair market value of the leased fee interest being acquired. (Added by Ord. 91-95)

Article 5. Eminent Domain

Sections:

38-5.1 Applicability.

38-5.2 Exercise of power of eminent domain.

38-5.3 Compensation.

38-5.4 Interest acquired.

38-5.5 Interest in compensation paid by the city.

38-5.6 Compulsory or involuntary conversion.

Sec. 38-5.1 Applicability.

This article applies to developments which are created by condominium property regimes under HRS Chapter 514A, and to developments existing under cooperative housing corporation status, and to residential planned developments not covered by HRS Chapter 516. (Added by Ord. 91-95)

Sec. 38-5.2 Exercise of power of eminent domain.

Within 12 months after the designation of the development or portion thereof for acquisition, the department shall facilitate the acquisition of the leased fee interest in the land beneath the development of the City and County of Honolulu through voluntary action of the parties, or the institution of eminent domain proceedings to acquire the leased fee interest or portion thereof so designated. If the leased fee interest is not acquired or eminent domain proceedings are not instituted within the 12 month period, the city shall reimburse the fee owner, the lessor, and the legal and equitable owners of land so designated

for actual out-of-pocket expenses they incurred as appraisal, survey, and attorney fees as a result of the designation. (Added by Ord. 91-95)

Sec. 38-5.3 Compensation.

The compensation to be paid for the leased fee interest shall be the current fair market value of the leased fee interest. The compensation shall be determined as of the date of the summons of the complaint in eminent domain. (Added by Ord. 91-95)

Sec. 38-5.4 Interest acquired.

(a) Upon acquisition of a development or portion thereof as provided in this article, the property interest acquired by the city is all of the right, title, and interest of the fee owner, and of the lessor and fee owner and all legal and equitable owners, if any besides the lessor, in and to the development or portion thereof acquired, subject to all covenants, conditions, easements, reservations, and restrictions of record running with the land or contained in the agreement of sale, deed, or other conveyance held by the fee owner, lessor, and legal and equitable owners or permitted or suffered by lessees of existing residential condominium or cooperative housing corporation leases, which are not inconsistent with the intent of this article. The acquisition terminates all the right, title, and interest of the fee owner, lessor, and all legal and equitable owners, whether such interest be a remainder, vested or contingent, a reversion, or other beneficial interest in the property, present or prospective.

(b) If the apartment lease, condominium conveyance document, or proprietary lease is subject to any leasehold mortgage, lien, or encumbrance suffered or permitted by the lessee, including, but not limited to, rights arising through divorce, marriage, or assignment, the purchase of the leased fee by the lessee in no manner shall affect or impair such mortgage, lien, or encumbrance or the security afforded thereby to the holder thereof, and the leasehold shall continue, notwithstanding the purchase of the leased fee by the lessee, for the purpose and to the extent necessary to avoid any impairment of the leasehold security, unless the holder of the leasehold mortgage, lien, or encumbrance in writing consents to the transfer thereof to the fee and merger as provided in this chapter. Upon written consent by the holder thereof, each leasehold mortgage, lien, or encumbrance to which the apartment lease, condominium conveyance document or proprietary lease is subject and to which the consent refers shall be transferred to and shall bind the fee acquired by the lessee, and thereafter shall continue in full force and effect as a mortgage, lien, or encumbrance of the fee acquired by the lessee, in the same order and priority among such mortgages, liens, and encumbrances so transferred to the fee as the same applied to and bound the lessee's immediate, previous leasehold interest.

(Added by Ord. 91-95)

Sec. 38-5.5 Interest in compensation paid by the city.

The lessor, the fee owner, and all legal and equitable owners shall share in the compensation paid by the city as their respective interest shall appear. Notwithstanding any provision to the contrary in any contract or lease, a developer or other person entitled to share in the lease rentals shall share in the compensation paid by the city to the extent of the persons's interest as may be determined by agreement of those entitled to share in the compensation paid by the city and in the absence of such agreement pursuant to HRS Chapter 658. (Added by Ord. 91-95)

Sec. 38-5.6 Compulsory or involuntary conversion.

It is the intent of the council, within the meaning of Section 1033 or Section 1231 of the Internal Revenue Code or the applicable provisions of HRS Chapter 235, as well as all other statutes, rules, regulations, administrative orders, and legal interpretations within the federal and state governments

relating to taxation, that any conveyance of title to property by a fee owner to the city under this section shall constitute a compulsory or involuntary conversion, as a result of the exercise of the power of condemnation or the threat of imminence thereof, and that the fee owner shall not, by reason in whole or in part of any provision of this chapter or by reason of the execution by the fee owner of leases to the property and other properties subsequent to the date of approval of this chapter, be deemed to hold the property primarily for sale to customers in the ordinary course of trade or business. (Added by Ord. 91-95)

Article 6. Revolving Fund

Section:

38-6.1 Fee simple condominium and cooperative and planned unit development revolving fund.

Sec. 38-6.1 Fee simple condominium and cooperative and planned unit development revolving fund.

A fee simple condominium and cooperative and planned unit development revolving fund is created. The funds appropriated for the purposes of this chapter and all moneys received or collected by the department of housing and community development under this chapter shall be deposited in the revolving fund. The proceeds in the fund shall be used for the necessary expenses of the department, including administration, under this chapter. All interest earned on moneys deposited by lessees into this revolving fund shall accrue to the lessees. (Added by Ord. 91-95)